

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4740 of 2005

Between:

R.Lakshmi Kantha Reddy, S/o. Patnam Reddy, Civil Contractor, Gudipadu Village, Gudur Mandal, Kurnool District.

..... PETITIONER

AND

1 Govt. of A.P., Panchayat Raj Department, Rep. By its
Principal Secretary.

2 The Superintending Engineer, Panchayat Raj, Anantapur,
Camp Officer at Kurnool.

3. The Executive Engineer, Panchayat Raj, Kurnool.

4. M.Madduleti Reddy, S/o. not known, Hanuman Rythu Mithra Sangham,
Mallapuram Village, Gudur Mandal, Kurnool District.

5. Chinna Thippanna, S/o. not known, M.Ramadasu Thatha Rythu Mithra Group,
Munagala Village, Gudur Mandal, Kurnool District.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, Order or Direction preferably one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in awarding the work relating to "Upgrading the road from Kothakota to Gudur via, Mallapuram, Munagala of Gudur Mandal" to the 4th respondent and the work relating to "Upgrading the road from Gudur to Kothakota via, Munagala, Mallapuram, of Gudur Mandal" to the 5th respondent on nomination basis through proceeding R.C.No.AEE/89/AMC/05 dated 11.02.2005 as illegal and arbitrary and consequently set aside the same.

b) to direct respondents 1 to 3 to follow the tender procedure for entrustment of the work relating to "Upgrading the road from Kothakota to Gudur via,

Mallapuram, Munagala of Gudur Mandal” or vice versa.

Counsel for the Petitioner:MR.C.V.Nagarjuna Reddy

Counsel for the Respondent Nos.1 to 3: GP FOR Panchayat Raj and Rural Development

Counsel for the Respondent Nos.4 and 5: Mr. K.Rathangapani Reddy

The Court made the following :

ORDER:

The petitioner is a civil contractor and he was registered with the Panchayat Raj Department. He claims to have undertaken several works. The Government of A.P., Panchayat Raj Department, 1st respondent, is said to have sanctioned a sum of Rs.100.00 crores in the year 2003 from the Market Committee funds, for providing and development of rural link roads and the roads maintained by the Panchayat Raj Department. Guidelines for entrustment of these works are laid down in G.O.Ms.No.61, dated 04.03.2003.

The petitioner alleges that respondents 2 and 3 have entrusted two items of work in favour of respondents 4 and 5 contrary to the guidelines issued in G.O.Ms.No.61 dated 04.03.2003. He alleges that the works of the value of about 30 lakhs were allotted to respondents 4 and 5 on nomination basis. The petitioner also alleges that though the works were allotted as two separate items, in effect, they are one and the same and thereby respondents 2 and 3 have caused enormous loss to the public exchequer. He contends that the works of such magnitude ought to have been allotted, only after inviting tenders. He seeks a writ of Mandamus declaring the action of the respondents in allotting the said works as illegal and arbitrary and a consequential direction to respondents 1 to 3 to follow the tender procedure, for entrustment of the said works.

The 3rd respondent filed a counter affidavit. He denied the allegations of the petitioner and stated that the procedure contained in G.O.Ms.No.16 was scrupulously followed in allotting the works. It is his case that respondents 4 and 5 are not individuals, but are associations of farmers. The 3rd respondent has referred to a memo, dated 22.10.2001, to sustain the action taken by them in entrusting the works. He denied the allegation that the two works entrusted to respondents 4 and 5 are one and the same. In the material papers filed along with the counter affidavit, it

is sought to be demonstrated that the two works are separate.

Respondent No.5 filed a counter affidavit. He states that he represents an association of farmers of Munagla Village, whereas, the 4th respondent represents a similar association of Mallapuram Village. He accused the petitioner of suppressing the facts. He stated that the works are under the 'food for work' programme and the same are meant to be entrusted on nomination basis. He too contends that the works entrusted to them are separate.

Sri C.V. Nagarjuna Reddy, learned counsel for the petitioner vehemently contends that the works of such a magnitude ought to have been entrusted only after calling for tenders from the qualified contractors. He submits that before entrusting the works to any contractor or individual, respondents 2 and 3 were expected to satisfy themselves about the technical qualifications, possessed by such persons or agencies. Drawing attention of this Court to Clause (7) of G.O.Ms.No.61, he submits that the procedure for inviting tenders for entrustment of the works, is not excluded and transparency could have been ensured, only by inviting tenders.

Learned Government Pleader for Panchayat Raj submits that the works covered by G.O.Ms.No.61 are meant for providing employment in the rural areas and for distribution of food grains, as remuneration for labour. He contends that having regard to the unique feature of the works, the Government has decided to entrust the same to associations and agencies hailing from the concerned villages and thereby it avoided the contractors. He submits that though the description of the two works appears to be with reference to the same work, in effect and as a matter of fact, they are different. On the same lines are the arguments of Sri Rathanga Pani Reddy, learned counsel for respondents 4 and 5.

The grievance or complaint of the petitioner is two fold. The first is that respondents 1 to 3 ought to have entrusted the works referred to above, only after inviting tenders from qualified contractors. The second is that the two works entrusted to respondents 4 and 5 are one and the same and thereby, enormous loss is caused to the public exchequer.

As for the first contention, it needs to be observed that the works, which are in question, are part of the scheme formulated under G.O.ms.No.61 dated 04.03.2003. The funds of Rs.100.00 crores were to be utilized equally for two categories of works

viz., a) link roads and b) Panchayat Raj Department Roads taken over by the R&B Department. Though the G.O. was issued in the year 2003 and the works thereunder were scheduled to be completed by May, 2003, the scheme is extended thereafter. Clause 7 of the G.O. reads as under:

“Prescribed procedures for letting out the works will be followed by the Engineering Departments and preference will be given to Weaker Section Cooperatives and local bodies for taking up these works in order to provide employment.”

Placing reliance upon this Clause, the learned counsel for the petitioner submits that the works are required to be entrusted only after inviting tenders. It is too difficult to discern the same from the said Clause. The Clause merely refers to the procedure for letting out the works. Unless any other standard or specific procedure in this regard is referred to, it cannot be said that the tendering is the only process, through which the works can be allotted. It is true that entrustment of works through tender system ensures transparency as well as control over the quality of work. However, unless the very policy of the Government providing for entrustment of works, otherwise than through tenders is challenged in a properly framed writ petition, this Court cannot find fault with the procedure adopted by respondents 1 to 3.

The vagueness that exists in the G.O.No.61 in the manner of entrustment of the works, to certain extent is put at rest by a memo, dated 22.10.2001 issued by the Government.

The clarification issued thereunder reads as under:

“Entrustment of works under food for works programme funds of Zilla Parishads/Mandal parishads and Gram Panchayat to self help groups, Rythumithra Farmers clubs and Gram Panchayats is accepted. The nominations of individual is not permitted.”

From this, it is evident that it is permissible to entrust such works to self help groups, Rythumithra Farmers Associations and Grams Panchayats etc., on nomination basis. The prohibition is only against entrustment of the works to individuals. Respondents 4 and 5 are Rythumithra groups. Therefore, no exception can be taken to the entrustment of the works to respondents 4 and 5.

The second contention urged on behalf of the petitioner is that the works entrusted to respondents 4 and 5 are one and the same and thereby it has resulted in huge loss to the public exchequer. On reading the description of the work, one would certainly gain the same impression at the first blush. Out of the two, one work is in respect of C.Belagal Mandal and the other is in respect of Gudur Mandal. The name of the work in both the cases reads as:

“Upgrading the roads from Kothakota to Gudur (via) Mallapuram,
Munagal”

In fact, this Court entertained the same doubt and called for the records. The records disclose that two items of works are taken up for the road from Gudur to Kothakota. The first work is in the limits of Gudur Mandal and is from Kms. 3/4 to 5/6. The second work is in the limits of C.Belagal and is from Kms. 6/2 to 8/8. Therefore, it cannot be said that the two works are one and the same.

Therefore, this Court is not convinced to grant any relief to the petitioner. The writ petition is accordingly dismissed. There shall be no order as to costs.

L.NARASIMHA REDDY, J

Date:

Jsu

To

1 The Principal Secretary, Govt. of A.P., Panchayat Raj

Department.

2 The Superintending Engineer, Panchayat Raj, Anantapur,

Camp Officer at Kurnool.

3 The Executive Engineer, Panchayat Raj, Kurnool.

4 2 CCs to the G.P for Panchayat Raj and Rural Development, High Court
Buildings, Hyderabad. (OUT)

5 2 CD copies.

